

No. 77-1853

Supreme Court, U. S.

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**In the Supreme Court of the United States**

**OCTOBER TERM, 1978**

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**THE MAY DEPARTMENT STORES COMPANY, PETITIONER**

**v.**

**JAMES EDWARD SMITH, ET AL.**

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**ON PETITION FOR A WRIT OF CERTIORARI TO  
THE UNITED STATES COURT OF APPEALS FOR  
THE EIGHTH CIRCUIT**

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**MEMORANDUM FOR THE FEDERAL RESPONDENT  
IN OPPOSITION**

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**WADE H. MCCREE, JR.,  
Solicitor General,  
Department of Justice,  
Washington, D.C. 20530.**

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The court of appeals held that the Veterans Administration is immune from garnishment suits brought to collect commercial debts of its employees. Petitioner acknowledges that no statute allows such suits, but it asks this Court to abrogate the doctrine of sovereign immunity in garnishment actions and to overrule *Buchanan v. Alexander*, 4 How. 20.

Abrogation or modification of sovereign immunity, however, is the responsibility of Congress, not of the judiciary. *Federal Land Bank of St. Louis v. Priddy*, 295 U.S. 229, 231; *Keifer & Keifer v. Reconstruction Finance Corp.*, 306 U.S. 381, 389; *Federal Housing Administration v. Burr*, 309 U.S. 242, 244-245; see *United States v. Testan*, 424 U.S. 392, 399. The intent of Congress with respect to commercial garnishment of Veterans Ad-

ministration employees could not be clearer. As the court of appeals noted, Congress recently amended a "sue and be sued" clause applicable to certain Veterans Administration transactions, 38 U.S.C. 1820(a)(1), to state that "nothing in this clause shall be construed as authorizing garnishment or attachment against the Administrator, the Veterans' Administration, or any of its employees." Pub. L. 95-117, Section 403, 91 Stat. 1066. This amendment was enacted in response to a judicial decision allowing such garnishments. The Senate Report noted that, under the amendment, the "Veterans' Administration will be saved a substantial amount of paper work by not having to process commercial garnishment writs issued against its employees." S. Rep. No. 95-412, 95th Cong., 1st Sess. 29 (1977).

The court of appeals thus correctly concluded that "the limited waiver of sovereign immunity of the Veterans Administration contained in 38 U.S.C. 1820(a)(1) does not extend to garnishment procedures to collect state court judgments of the type here involved" (Pet. App. A-6; footnote omitted). Petitioner's argument that this Court should abolish sovereign immunity in circumstances where Congress has expressly preserved it is insubstantial.

The petition for a writ of certiorari should be denied.

Respectfully submitted.

WADE H. MCCREE, JR.,  
*Solicitor General.*

AUGUST 1978.